IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 18892 of 1998

Between:

Vemulapalli Mohan Rao S/o Krishnaiah
r/o By-pass road, Tiruvuru (V&M), Krishna Dist.

..... PETITIONER

AND

1.. The Executive Engineer, O&N Division, Irregation & CAD Dept.,
Kalluru, Khammam Dist.
2.. Asst. Engineer, O & M Sub-Division, N.S.P. Canals,
Tiruvuru (V&M) Krishna Dist.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or direction preferably Writ of Mandamus declaring the order of the respondent No.1 issued in his letter No.DB/D3/L.A; Dt. 20-6-1998 as illegal, arbitrary, and violative of principles of natural justice and pass

Counsel for the Petitioner:MR.KOWTURU VINAYA KUMAR

Counsel for the Respondent No.: GP FOR IRRIGATION & COMM AREA DEV.

The Court made the following :

ORDER:

The petitioner, who is lessee of land admeasuring 69 sq.yards, filed the present writ petition, questioning the order dated 20-6-1998 directing him to handover the subject land within 3 days from the date of notice on the ground that petitioner has made certain permanent constructions in violation to condition No. 1 of page 3 of the agreement dated 16-6-1993.

The brief facts, which gave rise to filing of the present writ petition are that the petitioner is in occupation of about 69 square yards of land in Ward No.5 and running a hotel therein. The petitioner claims to have submitted representations dated 15-2-1995 and 16-2-1995 for allotment of the said land and no action was taken thereon. Thereafter at the instance of respondents, on 16-6-1993 the petitioner has entered into an agreement of lease for a period of one year subject to payment of Rs.100/- per month. Though, the lease was not renewed thereafter, the petitioner used to pay the lease amount and the same was stated to have been accepted by the respondent authorities. While the matter stood thus, the impugned notice dated 20-6-1998 was issued requiring the petitioner to vacate the subject land and to hand over the possession to first respondent. Hence, the present writ petition.

The learned counsel for petitioner, submitted that though the lease was not renewed from time to time, the respondents having received the lease amount without any objection, created a right in favour of the petitioner and without issuing any prior notice, the impugned order was issued which is against to the principles of natural justice and fair play. It is further stated that the petitioner was in possession

of the subject land for about 12 years, without causing any inconvenience to others and paid the lease amount up-to-date and directing him to vacate within three days is illegal and against principles of natural justice.

The respondent filed a counter affidavit denying the averments made by the petitioner. It is stated in the counter affidavit that the lease granted in favour of petitioner was not extended and merely sending the lease amount by way of demand draft does not create any right upon the petitioner. It is further stated that during the inspection, it was noticed that petitioner is trying to make certain permanent constructions by raising brick walls, as such to safeguard the Government property, a notice dated 20-6-1998 was issued.

This Court while admitting the writ petition by order dated
6-7-1998 granted interim direction not to demolish the hotel of the petitioner without issuing prior notice and without following due procedure prescribed by law. Pursuant to interim orders of this Court, the petitioner is stated to be still in possession of the subject land.

At the stage of arguments, learned counsel for petitioner submitted that the petitioner intends to make a fresh representation to the respondent authorities and the same may be directed to be considered in accordance with law.

Whether the petitioner has made any unauthorized permanent constructions or whether the subject land is required by respondents for any purpose or not, has to be looked into and decided by the concerned respondent authorities and it is not within the realm of this Court. If the said land is not required by the Government for any other purpose, the case of the petitioner for extension of lease or allotment can be considered, keeping in view his long possession over the land.

Hence, the petitioner is directed to make a fresh representation to the respondent authorities for extension of lease or for allotment of the subject land, and on filing such a representation, the same shall be considered in accordance with law. In the event, the authorities come to a conclusion that the subject land is required for any public purpose or that the occupation of the petitioner is causing any inconvenience to the public, and petitioner is required to be evicted from the subject land, an order in that regard shall be passed, granting at least two months period to the petitioner for vacating the subject premises.

Subject to above direction, the Writ Petition, stands disposed of. No costs.

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N.V.RAMANA,J

24-2-2005

TVK

..... REGISTRAR

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SECTION OFFICER

To

1.. The Executive Engineer, O&N Division, Irregation & CAD Dept.,
Kalluru, Khammam Dist.
2.. Asst. Engineer, O & M Sub-Division, N.S.P. Canals,
Tiruvuru (V&M) Krishna Dist.

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